TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 387.

THE UNITED STATES, APPELLANTS,

vs.

NELSON ANDERSON.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 14, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 387.

THE UNITED STATES, APPELLANTS,

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APPEAL FROM THE COURT OF CLAIMS.

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1 3284.

United States Court of Claims.

Petition.—Filed June 5, 1868.

To the honorable judges of the Court of Claims:

The petition of Nelson Anderson, of Charleston, in the district of South Carolina, a citizen of the United States, of color, respectfully sheweth—

That your petitioner alleges he was the owner and possessor of thirty-eight bales of upland cotton, and ten bales of Sea Island cotton, of the value of twelve thousand nine hundred and fifty-nine dollars and ten cents, purchased at sundry times in the years 1863 and 1864, and the same was stored, a portion of it on Dr. North's farm, on Charleston Neck, and at No. 33 ——— street; that on the 8th day of March, 1865, the condition and location of the cotton was reported by your petitioner to Captain Sturtevant, U. S. A., and the said cotton was seized and taken by the government of the United States, through the agency of Lieutenant Young, 56th New York Volunteers, on or about the 15th April, 1865, and when so taken was marked thus: "N. Anderson, 169."

That said cotton was shipped to New York, and consigned to Simeon Draper, and by him sold, and the proceeds thereof paid into the treasury.

The precise sum realized by the United States your petitioner cannot state, for the want of precise information not now in his power to obtain, but he believes not less than its alleged value. The precise sum realized, over and above costs and charges, he claims.

Your petitioner further alleges that he never has given any aid or encouragement to the late rebellion against the United States, but sincerely desired its overthrow and suppression from the beginning.

2 That said cotton never was the property of the so-called confederate government; that he was the bona fide purchaser and owner of said cotton, for a valuable consideration; that he never has been paid for the same, or any part thereof; that he has made no assignment of the whole or any part of said claim, and that he is not in any way indebted to the United States; and that a right of action hath accrued to him to have and recover from the United States the net amount of money realized by the United States, by virtue of the statute approved March 12, 1863, for which he brings this suit.

(Signed) NELSON his + mark. ANDERSON.

P. O. address: Summerville, South Carolina.

T. J. D. FULLER, *Solicitor.*

P. O. address: Washington, D. C.

SOUTH CAROLINA, *City of Charleston:*

On this 1st day of June, 1868, personally came Nelson Anderson, who signed the foregoing before me, and made oath that the matters and things set forth in said petition are just and true, according to his best knowledge, information, and belief; that he has made no assignment of said claim, or any part thereof; that he is not indebted to the United States; and that he has given no aid, encouragement, or assistance to the late rebellion against the United States.

DANIEL HORLBECK,
Commissioner, and Clerk of U. S. Court for South Carolina.

3 In the Court of Claims.

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The petitioner, by leave of the court first obtained, amends his petition by adding the following amendment:

That the petitioner has at all times borne true allegiance to the United States; that he never, at any time or in any way, has given any aid, comfort, or encouragment to the late rebellion against the United States.

T. J. D. FULLER,
Att'y for Claimant.

Allowed by the court 21st January, A. D. 1869.

4 In the United States Court of Claims.—December term, A.D. 1867.

NELSON ANDERSON
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THE UNITED STATES. } No. 3284.

And the said defendants, by John J. Weed, their solicitor, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of twelve thousand nine hundred and fifty-nine dollars and ten cents, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, the said defendants deny the said allegation.

JOHN J. WEED,
Ass't Solicitor for the U. S.

And for a further plea to the said petition, the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States."

JOHN J. WEED,
Ass't Solicitor for the United States.

NELSON ANDERSON
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THE UNITED STATES. } No. 3284.—Dec. term, 1868.

And for a further plea to the said petition, the said defendants say that the said claimant ought not to have or maintain his aforesaid

action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents, therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," approved M'ch 12, 1863.

Whereby, and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases for the protection of officers and agents of the government, and for the better defence of the treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

5 In the Court of Claims.

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And now, to wit, 22d of February, A. D. 1869, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Nelson Anderson, claimant, have and recover of and from the United States the sum of six thousand seven hundred and twenty-three dollars thirty-six cents, ($6,723\frac{36}{100}$.)

By the court.

6 In the Court of Claims. Dec. terms, 1868.

NELSON ANDERSON
vs.
THE UNITED STATES. } No. 3284.

To the Court of Claims:

The defendants hereby make application for the allowance of an appeal to the Supreme Court of the United States from the judgment rendered in this action on the 22d day of February, 1869, in favor of the claimant, for the sum of six thousand seven hundred & twenty-three dollars & thirty-six cents, ($6,723\frac{36}{100}$.)

Dated May 22, 1869.

ROBT. S. HALE,
Sp'l Counsel of Treasury Dep't.
T. LYLE DICKEY,
Ass't Att'y Gen'l.

Filed in clerk's office May 22, 1869.

7 At a Court of Claims held at the Capitol in the city of Washington, 24th May, A. D. 1869:

NELSON ANDERSON
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THE UNITED STATES. } No. 3284.

Ordered that the appeal prayed for in the above-entitled cause be allowed.

By the court.

8 In the Court of Claims.

NELSON ANDERSON
vs.
THE UNITED STATES.

The finding of facts and conclusions of law on which the court founded its judgment.

Upon the hearing of this cause, the following were found as the ultimate facts in the case:

Claimant, a free man of color, residing in Charleston, South Carolina, by occupation a drayman and cotton sampler, being possessed of personal and real property, in the early part of the war, and before the bombardment of Charleston, purchased of Daniel F. Fleming from fifteen to twenty bales of cotton in a loose and damaged condition, which he removed to Dr. North's farm, near the race-course, where it was dried, assorted, and rebailed, making ten or more bales of good cotton; and in September, 1864, and within three months there-
9 after, at four different times, he purchased of Philip M. Doncen fourty bales of cotton; ten of which were Sea Island, and stored at No. 33 Ashley street, the place of his residence, in Charleston. The last purchase was made some time before the evacuation of Charleston by the rebels. On the 8th of March, 1865, Anderson reported his cotton to the United States military authorities, and on the 5th of April following, it was removed, by Lieutenant Young, from its place of deposit to the Charleston custom-house, from whence it was shipped to New York, and there sold, by S. Draper, for the United States, and the proceeds thereof paid into the treasury, netting the gross sum of $7,362. The cotton purchased by claimant during the war was from persons residing within the insurrectionary territory, and whose loyalty was not proved.

The claimant proved his own loyalty, and that he never gave
10 any aid or comfort to the rebellion, or to persons engaged in it.

The claim was preferred on the 5th of June, 1868. Upon the hearing of the cause the special counsel for the United States moved to strike out and suppress the depositions of Philip M. Doncen and Daniel F. Fleming, they being incompetent by section 4, act of June 25th, 1868, as vendors of part of the cotton, and as persons through whom the claimant derived the claim, &c., against the United States.

The court overruled these objections, and admitted the depositions, because the vendors are not incompetent. The net proceeds amounted to the sum of $6,723 36. Upon these facts the court held—

1st. That claim was not barred by the limitation contained in the act of March 12th, 1863.

2nd. That the cotton in suit, nor any part of it, had been ipso facto forfeited, because the same had belonged to a person or persons
11 resident in the insurrectionary territory, and who were presumed to have given aid and comfort to the rebellion, no proceedings having been instituted to confiscate the same as the property of such person or persons.

3rd. That the vendors of the property were not incompetent witnesses by reason of the act of June 25th, 1868, section 4.

4th. That upon the whole case, claimant was entitled to judgment for the net proceeds as proved.

12 In the Court of Claims.

NELSON ANDERSON
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THE UNITED STATES. } No. 3284.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the Attorney General of the United States, and of the special counsel of the Treasury Department, for the allowance of an appeal, as filed in the clerk's office May 22, 1869, and of the order of the Court of Claims allowing the same, of the finding of facts & the conclusions of law on said facts, on which the court founded its opinion.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this tenth day of December, A. D. 1869.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

13 (Indorsement on record:) Court of Claims. No. 387. The United States, appellants, vs. Nelson Anderson.

Filed 14th December, 1869.

11 Op—478
April 4 1866
January 1
15 Stat 251
March 30 1868
See 93—
15 Stat at Large 43

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES, *Appellants*, vs. NELSON ANDERSON. } No. 389.

THE UNITED STATES, *Appellants*, vs. WILLIAM POLLARD. } No. 391.

On appeal from the Court of Claims.
Brief for appellants.

ROB: S. HALE,
Special Counsel for the United States.

STATEMENT OF THE CASE.

These actions were brought in the court below for the proceeds of captured and abandoned property, under the third section of the act of 12th March, 1863.

In Anderson's case, the petition was filed in the court below, 5th June, 1868, and judgment was rendered for the claimant 22d February, 1869, for six thousand seven hundred twenty-three dollars and thirty-six cents, ($6,723 36.)

The claim was for the proceeds of fifty (50) bales of cotton, forty (40) of which were purchased by the claimant, of one Doucin. in September, 1864, and during the three months thereafter, at Charleston, S. C., the residence of the claimant and Doucin.

The loyalty of Doucin is not proven.

On the hearing, objection was made by the counsel for the United States to the depositions of Doucin and Fleming, as incompetent under section 4 of the act of 25th June, 1868, (15th vol. Statutes at Large, page 75,) which objection was overruled by the court.

In Pollard's case, the petition was filed 15th November, 1867, and judgment was rendered for the claimant, 26th May, 1869, for ten thousand and twenty dollars, ($10,020.)

His claim was for the proceeds of sixty (60) bales of cotton, bought by him in November and December, 1864, of Messrs. Erwin & Hardee, at Savannah, Georgia, where the claimant and said Erwin & Hardee resided.

The loyalty of the vendors (Erwin & Hardee) is not proven; but, on the contrary, it is shown that both were in the service of the confederate government during the rebellion, and that Hardee was deputy collector of the port of Savannah, under the confederate government, at the time of the capture of the city.

The loyalty of the claimants in both is proven.

POINTS.

I.

The court below erred in assuming to determine the amount of the net proceeds of the cotton in question, and to render judgment for a specific sum. (See brief filed in Grossmeyer's case, No. 370.)

II.

The actions were neither of them brought within two years after the suppression of the rebellion, and the court had no jurisdiction under the act. (See brief filed in Grossmeyer's case, No. 370.)

In Pollard's case, the cause of action arose in Georgia, and reference is made to the President's proclamation of 17th June, 1865, (13 Stat. at L., p. 764.)

In Anderson's case, the cause of action arose in South Carolina, and reference is made to the proclamation of 30th June, 1865, (*id.*, 769.)

The latter suit was also brought subsequent to the 2d April, 1868, the termination of two years from the proclamation of 2d April, 1866, (14 *id.*, 811,) to which reference is also had.

III.

The cotton in each case having been bought after 23d September, 1862, of persons proven to have given aid and comfort to the rebellion after that date, or presumed as such, from their residence under the act of 25th June, 1868, (15th vol. Statutes at Large, page 75,) the title of the claimants fails ~~falls~~ under the act of 17th July, 1862, (vol. 12 Statutes at Large, page 590; and see brief in Grossmeyer's case, No. 370.)

It will be noted that, in Pollard's case, affirmative proof is made of the disloyalty of his vendors, within the 5th and 6th sections of the act of 17th July, 1862.

IV.

In the case of Anderson, the court below erred in admitting the depositions of the vendors of the cotton in question to the claimant, they being incompetent under the 4th section of the act of 25th June, 1868. (15th vol. Statutes at Large, page 75.)

ROB: S. HALE,
Special Counsel for the United States.

Supreme Court of the United States.

UNITED STATES, Appellant,
vs.
NELSON ANDERSON, Appellee.
No. 387.

APPELLEE'S BRIEF.

The act of March 12, 1863, inaugurated a new policy. It is not an act in addition to, or amendatory of, any previous law of Congress. It is not an act in *pari materia* with any previous act. Its construction should he independent of any other act of Congress. It announces "that it shall be lawful hereafter for the Secretary of the Treasury to appoint special agents, from time to time, to secure and collect all CAPTURED and ABANDONED property in any State or Territory, or portion of State or Territory, declared to be in insurrection by the President's proclamation of July 1, 1862, provided it be property which has not been, or intended to be used for carrying on war."

The agents are to give bond, with sureties, in such sum as shall be deemed necessary; and they shall cause books of accounts to be kept, "*showing from whom such property was received, the cost of transportation*, and the proceeds of the sale thereof."

"And any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years AFTER THE SUPPRESSION OF THE REBELLION, prefer his claim to the proceeds thereof in the Court of Claims, and on proof, to the satisfaction of said court, of his ownership of said property, or of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the RESIDUE of such proceeds, after

deduction of any purchase money which may have been paid (by whom, the United States or the owner,) "together with the expense of transportation and sale of said property, and other lawful expenses attending the disposition thereof."

During this late war much has been said and written upon the subject of the war powers of Government over enemy property, and the duty of allegiance from the citizen to his Government.

But little has been said or written of the correlative duty of protection which the Government owes to its loyal citizens. The British government, at the close of the American revolution, signified its sense of obligation towards its loyal adherents by appropriating £800,000 for their relief, and giving each head of a family a farm, and a year's provision, thus laying the foundation for the settlement and growth of the provinces of New Brunswick and Nova Scotia. (*See Sabine's Loyalist.*)

The record shows the claimant never gave any aid or comfort to the rebellion, or to persons engaged therein; that confiding, like his race generally, in the promises of the United States Government, he reported his cotton on the 8th of March, 1865, to the military authorities of the United States, and that in April following the military seized it. He brings himself within the letter and spirit of the statute, and yet his right to recover the proceeds of the RESIDUE of his cotton is resisted by the United States.

The first objection of the appellant, in natural order, is to the competency of the witnesses to prove claimant's title to a portion of the cotton in controversy, under the 4th section of the act approved June 25, 1868. (Vol. 15, p. 75.) The statute is in these words:

"That no plaintiff or claimant, or any person from or through whom any such plaintiff or claimant derives his alleged title, claim, or right *against the United States*, or any person interested in any such title, claim, or right, shall be a competent witness in the Court of Claims, in supporting any such title, claim, or right."

Now, no claim can arise against the United States until the

United States shall have first seized and taken possession of the cotton.

Then, and not until then, can a loyal owner be said to have a claim against the United States. Any sale, or transfer, or assignment of such a claim, after it accrues, all parties or privies in interest, direct or intermediate, are declared by the statute to be incompetent witnesses.

There is a plain, palpable distinction between a claim to the PROPERTY and a claim against the United States for the *residue* of the proceeds of the property.

The measure of liability is different in the two cases. For the one claim the measure of damages would be the value of the property at the time and place taken, without regard to its subsequent loss, depreciation, or appreciation.

In the other case, it is for the net proceeds, which may have finally reached the Treasury, subject to deductions of expense of *shipment*, *storage*, *wharfage*, *auctioneers'* fees, and insurance, &c.

If by *accident*, *casualty*, or *depredations*, no part of the proceeds of the cotton finally reach the Treasury, then there is no claim upon or against the United States; so that claim, right, title, or interest in or to the PROPERTY is wholly a different subject-matter from a claim upon the United States for a limited portion of the proceeds of the property.

If such be not the true reading of the statute, the language of it should be, omitting the words "*title, claim, or right against the United States,*" and read, "that no plaintiff, claimant, or any person from or through whom any such plaintiff or claimant derives his alleged title, claim, or right to the PROPERTY seized by the United States, shall be a competent witness. This would be the more natural language for the legislator to use to express the meaning sought to be given by construction to the language of the act.

It is a matter of general history that large portions of the cotton actually seized by the United States was burnt at Mobile, Savannah, and in New York, and some lost at sea, and from which no proceeds ever came into the Treasury. For this cotton so lost it never has been contended that the

Government was liable under the act of 12th March, 1863, so far as I am aware.

Hence the vendors of the claimant, who had the cotton in their possession a long time prior to its seizure, had no right, title, or claim against the United States for its seizure made subsequent to their sale.

I.

The next question is, What effect shall be given to the statute of July 17, 1862, (vol. 12, p. 591,) as it respects this claimant? He purchased his cotton in the usual course of trade, long anterior to the surrender of Charleston, in good faith, and with no design or intent to give aid or comfort to the rebellion *or to persons engaged in it*, and the record so finds.

The case of Thorrington *vs.* Smith *et al.*, decided by this court, and reported in the American Law Register, settles that a purchase of real estate in 1864, with a promise to pay in confederate money, was a valid and legal contract.

The case does not find, as a fact, whether the claimant's vendors were loyal or disloyal. The record shows their loyalty was not proven. The Government did not allege and prove their disloyalty, as the act of July 17, sec. 6, contemplates.

The claimant made out his claim strictly in compliance with the words of the act of March 12, 1863, and there rested his case.

If the Government would defeat the claimant's right to recover, upon the ground that his vendors had been engaged in rebellion, or in giving aid and comfort to persons engaged therein, it should have been alleged and proven as directed in the act. The property was reported by the claimant to the Government on the 8th of March, 1865, and was taken possession of on the 5th of April following, as his property, by the Government agents, and so reported. The attempt now made by the attorney of the Government to say it was seized or forfeited, as some other person's, is an after thought merely.

Where is this collateral inquiry to stop? If the claimant,

to entitle him to recover, must show affirmatively that his vendor was a loyal man, is he to stop there, or must he trace it back through every intermediate owner to the person who grew it?

Thus convert the remedial statute of 1863 into a myth and a snare, to entrap loyal persons into useless and vexatious litigation.

The property was not *seized*, *taken*, or *held*, or *dealt with*, under the provisions of the 7th section of the act of July 17, 1862; but was *taken*, *seized*, and *held* under the captured and abandoned property act, and the money, the proceeds of it, credited to that fund. Therefore, the United States cannot say they hold the proceeds under any other law; and if the claimant brings himself within the provisions of it, he is entitled to the net proceeds of his cotton. The Government ought to be held concluded, by the registry of its own agent, as to whom the property belonged.

II.

But the more important question is, *when* did the statute commence to run? WHEN WAS THE "REBELLION SUPPRESSED?"

This initial point of time is made, by the statute itself, to commence upon the happening of an anticipated, but unknown, contingent and future event: an event hoped for, looked for, expected to occur at some future day, after the passage of the law. The statute does not point out or prescribe by whom, or in what manner, that event shall be determined.

But it is affirmed, the statute implies some legal mode of ascertainment, such as the law adjudicates upon transactions of an analogous character.

This may be implied from the silence of the statute on the subject how the event shall be determined.

When it speaks of the "*suppression of the rebellion*," as the time when the statute of limitations shall begin to run, it, by necessary implication, means when *suppressed*, according to political law—established rules of law.

Now, between independent and belligerent nations treaties

of peace usually settle the question. The action of the political power determines the question for the judicial branch of the Government.

By the law of analogy, that power must determine it in this instance. The courts cannot determine it from the nature of the question itself. It belongs to another branch of the Government. It is not a judicial question. It is not susceptible of an issue. Witnesses cannot be brought before the court to determine it, or testify about it.

It is not for the court to determine, but for the law-making power to determine. (2 W. Va. Reports, p. 416.)

Williams *vs.* Suffolk Insurance Co., 13 Peters' Rep., p. 420; 2 do., 314; 7 do., p. 86; 8 do., p. 70.

Luther *vs.* Borden, *et al.*, 7 do., p. 44.

III.

THE LAW-MAKING POWER AND THE EXECUTIVE POWER, CONCURRENTLY, HAVE SETTLED THE QUESTION, AND FIXED THE POINT OF TIME TO BE 20TH AUGUST, A. D. 1866.

For the purpose of testing the accuracy of the foregoing proposition, a chronological examination of the acts of Congress and proclamations of the Executive are necessary.

1. By the 5th section of the act of July 13, 1861, vol. 12, p. 257, it is made the duty of the President, in a certain contingency, by proclamation, and in the exercise of his executive power, to declare States, or parts of States, "*in a state of insurrection;*" and thereupon all "commercial intercourse between the citizens thereof and the rest of the United States shall cease so long as such hostility shall continue," with a proviso that the President may license special intercourse, in his discretion; which is only an affirmance of the war-making power, according to the laws of nations.

Just here it should be noted, that the executive, with the sanction of the legislative power, *fixed the status* of the rebellious territory, which *status* necessarily must continue until

it shall be changed by the executive power, either with or without the assent of the legislative power.

By the 3d section of the act of March 12, 1863, (vol. 12, p. 820,) it is enacted, "and any person claiming," &c., "may at any time, within two years *after the suppression of the rebellion*," prefer his claim, &., &c.

Insurrection and *rebellion* are words of different signification. (See Webster's Dictionary, and authorities cited.) Insurrection may exist in different States, and in different localities of the same States; as, or instance, Shay's insurrection! The whiskey insurrection! Burr's insurrection!

But the organization of eleven States into a consolidated confederate government, with the avowed purpose and object of overthrowing the Government of the United States, and making partition of its empire, is appropriately termed a GREAT REBELLION!!

Hence the distinction is a material one between *insurrection* and *rebellion*.

The rebellion, as an entirety, as a whole, as an existing fact, in its most comprehensive sense, must be suppressed and overthrown, and politically proclaimed, before the initial point of time became fixed, for the statute to commence to run.

In the progress of the war it became necessary to modify and change the *status* of portions of the confederate states, for the purposes of commercial intercourse with foreign and domestic persons. This was done by the Executive in reference to portions of East and West Virginia and Louisiana. But these commercial regulations fell far short of a recognized suppression of the rebellion as a whole or as an entirety.

The argument of *inconvenience*, that loyal persons in one State should not delay the prosecution of their claims until the rebellion in another State is suppressed, it is respectfully suggested, is not sound, or entitled to weight. Why should loyal persons have their property seized at all? It at best to them was a hardship! The answer is, they fell under the disabilities that attached to the political organizations of which they unfortunately were a component part; as their rights fell with their organization, so their remedies arise with its

restoration. Individuality is lost in the community. They fall with their community, and rise with it.

The statute speaks of the rebellion as a whole, as a public fact, with its territorial proportions defined by executive authority, and not in integral parts.

But, further, assume, for argument's sake, that the rebellion may be considered suppressed in one State before it shall be in another, and in parts of the same State before it may be in the whole State; but suppose the witnesses for and against the claim were residing in States still in actual rebellion, what inconvenience might result from such a *chaotic condition* of public affairs!

Then, again, the condition of the Treasury, the *wants* and means of the country, its ability and disposition to refund, may be made to depend upon the final overthrow and suppression of the rebellion.

The Government might not wish to enter upon a system of liberal refundment before the war was off its hands, and the state of its finances permit the appropriation of its exchequer to indemnifying loyal citizens in rebellious States. The argument of *inconvenience*, therefore, cuts both ways.

The President, by his proclamation of June 15, 1865, declares the *insurrection* (not rebellion) at an end in the State of Tennessee; and by his proclamation of April 2, 1866, declares the insurrection (not the rebellion at an end in the States therein enumerated, excepting the State of Texas. By his final proclamation of August 20, 1866, he adds the additional clause, not found in any previous proclamation, to wit:

"*And I do further proclaim, that the said insurrection is at an end, and that peace, order, tranquillity, and civil authority, now exist in and throughout the whole of the United States!!*"

This is the finality—the crowning act of the *suppression of the rebellion*—as contemplated by the act of March 12, 1863, which did not take place before the date of this proclamation! To say the rebellion was suppressed before this date would be like saying that the seizing and occupying the outlying *batteries* and *redoubts* of a besieged fort was a capture of the fort itself!

Now, though the President does not use the word "rebellion" in this last proclamation, but speaks of it as an "insurrection," yet, by the last-quoted section, he defines what he means by the word "insurrection."

IV.

I NOW TURN TO WHAT CONGRESS HAS DONE, BY WAY OF GIVING ITS SANCTION TO THE ACTS OF THE EXECUTIVE, AND ITS APPROVAL ON HIS DOINGS.

By the act of Congress of June 24, 1864, (vol. 13, p. 144,) it is enacted, that the pay of the officers, &c., of the army, from the 1st of May, 1864, "AND DURING THE CONTINUANCE OF THE PRESENT REBELLION," shall be, &c. Mark the language!! Not during the continuance of the insurrection; but during the continuance of the rebellion; not in any one State or States, for an indefinite and uncertain period of time, dependent upon the happening of a future contingent event.

Now, turning to the 2d section of the act of March 2, 1867, (vol. 13, p. 422,) and this increased pay is continued for three years longer, "*from and after the close of the rebellion, as announced by the President of the United States, by his proclamation bearing date August* 20, 1866."

This enactment is a legislative sanction and approval of the proclamation of the President!

There is no act of Congress militating against this sanction.

But there are other important acts of Congress affirmatory of this construction.

By the act of February 8, 1865, (vol. 13, p. 568,) Congress enacted that the States in rebellion should not vote in the presidential election to fill the term from March, 1865, to March, 1869. How does that look?

Then, again, Congress, by an act of July 28, 1866, (vol. 13, p. 363,) solemnly proceeded to admit the State of Tennessee into the Union, and for the first time gave to its loyal citizens the right to sue in this court.

V.

Now, then, the executive and legislative branches of the Government having concurred and fixed the time the *rebellion was suppressed*, will this court adopt and follow it? or will it antagonize itself, against the other two branches of the Government, set up a different period of its own, and place itself in conflict with the other departments? and that, too, upon a political question, and on a question in no sense a judicial one?

And while Congress, for the purpose of giving increased pay to the army, has fixed the period or date of a great PUBLIC POLITICAL FACT, namely, the time of the SUPRESSION OF THE REBELLION, to be August 20, 1866, will this court fix a different period or date for that event, for the purpose of shutting out a few honest and loyal claimants by a plea of statute of limitations, ever regarded as odious, and to be strictly pleaded, by all judicial tribunals?

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